



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 720-00

8 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 21 November 1995 for four years at age 18. The record reflects that you were advanced to ABHAA (E-2) and served without incident until 9 April 1996. On that date, the Chief of Naval Personnel (CNP) advised the commanding officer that you had failed to disclose your full arrest record on "DD Form 398-5," submitted on 30 March 1995 and on the "DD Form 1966," dated 21 November 1995. Arrests not disclosed included injury to personal property, trespassing, speeding, and two instances of failure to appear with one case still pending. The command was directed to initiate separation processing for fraudulent entry or request a waiver of the requirement for separation action.

On 12 September 1996 you received nonjudicial punishment (NJP) for a 35 day period of unauthorized absence and insubordination. Punishment imposed was a reduction in rate to ABHAR (E-1), forfeitures of \$437 per month for two months, with one month suspended, and 45 days of restriction and extra duty.

On 1 October 1996, CNP again requested that your command initiate administrative separation processing for fraudulent entry or request a waiver. On 7 November 1996 you were notified that you were being considered for discharge under honorable conditions by reason of defective enlistment and induction due to fraudulent entry. You were advised of your procedural rights and waived those rights. The discharge authority noted that since reporting on board you had been an administrative burden, as evidenced by your most recent NJP. Incident to your separation you were not recommended for reenlistment. You received a general discharge on 11 October 1996 and were assigned an RE-4 reenlistment code.

Regulations require the assignment of an RE-4 reenlistment code to individuals discharged by reason of fraudulent entry and who are not recommended for reenlistment. Since you have been treated no differently than others separated under similar circumstances the Board could find no error or injustice in your assigned reenlistment code. The Board concluded your discharge was proper given your failure to disclose a prior civil arrest record and an NJP for more than 30 days of UA. The Board noted your contention that you have not received any of the money you contributed towards the Montgomery GI Bill. Administration of educational benefits comes under the purview of the Department of Veterans Affairs and not this Board. However, to be eligible for educational benefits an individual must have received an honorable discharge and have completed at least three years of active service. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director